

AMENDED IN SENATE JUNE 16, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 316

Introduced by Assembly Member Solorio

February 18, 2009

An act to amend Section 340.6 of the Code of Civil Procedure, and to amend Sections 851.8, 4901, 4903, and 4904 of, and to add Section 851.86 to, the Penal Code, relating to wrongful convictions.

LEGISLATIVE COUNSEL'S DIGEST

AB 316, as amended, Solorio. Wrongful convictions.

Existing law requires that an action against an attorney for a wrongful act or omission, other than for actual fraud, arising in the performance of professional services must be commenced within one year after the plaintiff discovers, or should have discovered, the wrongful act or omission, or 4 years from the date of the wrongful act or omission, whichever occurs first.

This bill would provide that, if the plaintiff is required to establish his or her factual innocence for an underlying criminal charge as an element of his or her claim against an attorney, the time period to commence this action shall be 2 years after the plaintiff achieves postconviction exoneration in the form of a final judicial disposition of the criminal case.

Existing law provides that any finding that an arrestee is factually innocent, as specified, shall not be admissible as evidence in any action.

This bill would provide that, notwithstanding this provision, a finding that an arrestee is factually innocent shall be admissible as evidence at a hearing before the California Victim Compensation and Government Claims Board.

Existing law allows a presiding judge, whenever a person is acquitted of a charge and it appears to the judge that the defendant is factually innocent of the charge, to order that the records in the case be sealed.

This bill would require a judge, upon written or oral motion of any party in the case or the court, to order that the records in a case be sealed whenever a person is convicted of a charge and the conviction is set aside because a determination was made that the person was factually innocent.

Existing law allows a person erroneously convicted and imprisoned to present a claim within a period of 6 months after judgment of acquittal or discharge given, or after pardon granted, or after release from imprisonment, against the state to the California Victim Compensation and Government Claims Board for the pecuniary injury sustained by him or her through the erroneous conviction and imprisonment.

This bill would instead provide that a person erroneously convicted and imprisoned may present this claim within 2 years.

Existing law establishes a process for a hearing on an erroneously convicted person's claim at which the claimant is required to introduce evidence in support of the claim and the Attorney General may introduce evidence in opposition. Existing law requires the claimant to prove the facts set forth in the statement constituting the claim, including that the crime charged was either not committed at all, or, if committed, not committed by the claimant, and the fact that the claimant did not, by any act or omission, either intentionally or negligently, contribute to the bringing about of his or her arrest or conviction, and that he or she sustained pecuniary injury. If the evidence shows that the claimant has proved these facts, existing law requires the board to recommend to the Legislature that an appropriation be made for indemnifying the claimant.

This bill would remove the requirement on the claimant to prove that he or she did not negligently contribute to his or her arrest or conviction. The bill would provide that when determining whether the claimant intentionally contributed to the bringing about of his or her arrest or conviction, the factfinder shall not consider statements obtained from an involuntary false confession or involuntary plea. *The bill would provide that the claimant shall bare the burden of proving by a preponderance of the evidence that the statements were obtained from an involuntary false confession or involuntary plea.*

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all the
2 following:

3 (a) It is the intent of the Legislature to remedy some of the harm
4 caused to all factually innocent people who have been wrongfully
5 convicted and served time in state prison in California.

6 (b) A factually innocent person is a person who was convicted
7 of a crime that either was not committed or, if committed, was not
8 committed by him or her.

9 (c) This act would remove some of the obstacles to
10 compensation for the factually innocent and would ease their
11 transition back into society.

12 SEC. 2. Section 340.6 of the Code of Civil Procedure is
13 amended to read:

14 340.6. (a) An action against an attorney for a wrongful act or
15 omission, other than for actual fraud, arising in the performance
16 of professional services shall be commenced within one year after
17 the plaintiff discovers, or through the use of reasonable diligence
18 should have discovered, the facts constituting the wrongful act or
19 omission, or four years from the date of the wrongful act or
20 omission, whichever occurs first. If the plaintiff is required to
21 establish his or her factual innocence for an underlying criminal
22 charge as an element of his or her claim, the action shall be
23 commenced within two years after the plaintiff achieves
24 postconviction exoneration in the form of a final judicial
25 disposition of the criminal case.~~In~~ *Except as regards claims*
26 *requiring the plaintiff to establish his or her factual innocence, in*
27 no event shall the time for commencement of legal action exceed
28 four years except that the period shall be tolled during the time
29 that any of the following exist:

30 (1) The plaintiff has not sustained actual injury.

31 (2) The attorney continues to represent the plaintiff regarding
32 the specific subject matter in which the alleged wrongful act or
33 omission occurred.

34 (3) The attorney willfully conceals the facts constituting the
35 wrongful act or omission when such facts are known to the
36 attorney, except that this subdivision shall toll only the four-year
37 limitation.

1 (4) The plaintiff is under a legal or physical disability which
2 restricts the plaintiff's ability to commence legal action.

3 (b) In an action based upon an instrument in writing, the
4 effective date of which depends upon some act or event of the
5 future, the period of limitations provided for by this section shall
6 commence to run upon the occurrence of that act or event.

7 SEC. 3. Section 851.8 of the Penal Code is amended to read:

8 851.8. (a) In any case where a person has been arrested and
9 no accusatory pleading has been filed, the person arrested may
10 petition the law enforcement agency having jurisdiction over the
11 offense to destroy its records of the arrest. A copy of the petition
12 shall be served upon the prosecuting attorney of the county or city
13 having jurisdiction over the offense. The law enforcement agency
14 having jurisdiction over the offense, upon a determination that the
15 person arrested is factually innocent, shall, with the concurrence
16 of the prosecuting attorney, seal its arrest records, and the petition
17 for relief under this section for three years from the date of the
18 arrest and thereafter destroy its arrest records and the petition. The
19 law enforcement agency having jurisdiction over the offense shall
20 notify the Department of Justice, and any law enforcement agency
21 that arrested the petitioner or participated in the arrest of the
22 petitioner for an offense for which the petitioner has been found
23 factually innocent under this subdivision, of the sealing of the
24 arrest records and the reason therefor. The Department of Justice
25 and any law enforcement agency so notified shall forthwith seal
26 their records of the arrest and the notice of sealing for three years
27 from the date of the arrest, and thereafter destroy their records of
28 the arrest and the notice of sealing. The law enforcement agency
29 having jurisdiction over the offense and the Department of Justice
30 shall request the destruction of any records of the arrest which they
31 have given to any local, state, or federal agency or to any other
32 person or entity. Each agency, person, or entity within the State
33 of California receiving the request shall destroy its records of the
34 arrest and the request, unless otherwise provided in this section.

35 (b) If, after receipt by both the law enforcement agency and the
36 prosecuting attorney of a petition for relief under subdivision (a),
37 the law enforcement agency and prosecuting attorney do not
38 respond to the petition by accepting or denying the petition within
39 60 days after the running of the relevant statute of limitations or
40 within 60 days after receipt of the petition in cases where the statute

1 of limitations has previously lapsed, then the petition shall be
2 deemed to be denied. In any case where the petition of an arrestee
3 to the law enforcement agency to have an arrest record destroyed
4 is denied, petition may be made to the superior court that would
5 have had territorial jurisdiction over the matter. A copy of the
6 petition shall be served on the law enforcement agency and the
7 prosecuting attorney of the county or city having jurisdiction over
8 the offense at least 10 days prior to the hearing thereon. The
9 prosecuting attorney and the law enforcement agency through the
10 district attorney may present evidence to the court at the hearing.
11 Notwithstanding Section 1538.5 or 1539, any judicial determination
12 of factual innocence made pursuant to this section may be heard
13 and determined upon declarations, affidavits, police reports, or
14 any other evidence submitted by the parties which is material,
15 relevant and reliable. A finding of factual innocence and an order
16 for the sealing and destruction of records pursuant to this section
17 shall not be made unless the court finds that no reasonable cause
18 exists to believe that the arrestee committed the offense for which
19 the arrest was made. In any court hearing to determine the factual
20 innocence of a party, the initial burden of proof shall rest with the
21 petitioner to show that no reasonable cause exists to believe that
22 the arrestee committed the offense for which the arrest was made.
23 If the court finds that this showing of no reasonable cause has been
24 made by the petitioner, then the burden of proof shall shift to the
25 respondent to show that a reasonable cause exists to believe that
26 the petitioner committed the offense for which the arrest was made.
27 If the court finds the arrestee to be factually innocent of the charges
28 for which the arrest was made, then the court shall order the law
29 enforcement agency having jurisdiction over the offense, the
30 Department of Justice, and any law enforcement agency which
31 arrested the petitioner or participated in the arrest of the petitioner
32 for an offense for which the petitioner has been found factually
33 innocent under this section to seal their records of the arrest and
34 the court order to seal and destroy the records, for three years from
35 the date of the arrest and thereafter to destroy their records of the
36 arrest and the court order to seal and destroy such records. The
37 court shall also order the law enforcement agency having
38 jurisdiction over the offense and the Department of Justice to
39 request the destruction of any records of the arrest which they have
40 given to any local, state, or federal agency, person or entity. Each

1 state or local agency, person or entity within the State of California
2 receiving such a request shall destroy its records of the arrest and
3 the request to destroy the records, unless otherwise provided in
4 this section. The court shall give to the petitioner a copy of any
5 court order concerning the destruction of the arrest records.

6 (c) In any case where a person has been arrested, and an
7 accusatory pleading has been filed, but where no conviction has
8 occurred, the defendant may, at any time after dismissal of the
9 action, petition the court that dismissed the action for a finding
10 that the defendant is factually innocent of the charges for which
11 the arrest was made. A copy of the petition shall be served on the
12 prosecuting attorney of the county or city in which the accusatory
13 pleading was filed at least 10 days prior to the hearing on the
14 petitioner's factual innocence. The prosecuting attorney may
15 present evidence to the court at the hearing. The hearing shall be
16 conducted as provided in subdivision (b). If the court finds the
17 petitioner to be factually innocent of the charges for which the
18 arrest was made, then the court shall grant the relief as provided
19 in subdivision (b).

20 (d) In any case where a person has been arrested and an
21 accusatory pleading has been filed, but where no conviction has
22 occurred, the court may, with the concurrence of the prosecuting
23 attorney, grant the relief provided in subdivision (b) at the time of
24 the dismissal of the accusatory pleading.

25 (e) Whenever any person is acquitted of a charge and it appears
26 to the judge presiding at the trial at which the acquittal occurred
27 that the defendant was factually innocent of the charge, the judge
28 may grant the relief provided in subdivision (b).

29 (f) In any case where a person who has been arrested is granted
30 relief pursuant to subdivision (a) or (b), the law enforcement agency
31 having jurisdiction over the offense or court shall issue a written
32 declaration to the arrestee stating that it is the determination of the
33 law enforcement agency having jurisdiction over the offense or
34 court that the arrestee is factually innocent of the charges for which
35 the person was arrested and that the arrestee is thereby exonerated.
36 Thereafter, the arrest shall be deemed not to have occurred and
37 the person may answer accordingly any question relating to its
38 occurrence.

39 (g) The Department of Justice shall furnish forms to be utilized
40 by persons applying for the destruction of their arrest records and

1 for the written declaration that one person was found factually
2 innocent under subdivisions (a) and (b).

3 (h) Documentation of arrest records destroyed pursuant to
4 subdivision (a), (b), (c), (d), or (e) that are contained in
5 investigative police reports shall bear the notation "Exonerated"
6 whenever reference is made to the arrestee. The arrestee shall be
7 notified in writing by the law enforcement agency having
8 jurisdiction over the offense of the sealing and destruction of the
9 arrest records pursuant to this section.

10 (i) (1) Any finding that an arrestee is factually innocent pursuant
11 to subdivision (a), (b), (c), (d), or (e) shall not be admissible as
12 evidence in any action.

13 (2) Notwithstanding paragraph (1), a finding that an arrestee is
14 factually innocent pursuant to subdivisions (a) to (e), inclusive,
15 shall be admissible as evidence at a hearing before the California
16 Victim Compensation and Government Claims Board.

17 (j) Destruction of records of arrest pursuant to subdivision (a),
18 (b), (c), (d), or (e) shall be accomplished by permanent obliteration
19 of all entries or notations upon the records pertaining to the arrest,
20 and the record shall be prepared again so that it appears that the
21 arrest never occurred. However, where (1) the only entries on the
22 record pertain to the arrest and (2) the record can be destroyed
23 without necessarily affecting the destruction of other records, then
24 the document constituting the record shall be physically destroyed.

25 (k) No records shall be destroyed pursuant to subdivision (a),
26 (b), (c), (d), or (e) if the arrestee or a codefendant has filed a civil
27 action against the peace officers or law enforcement jurisdiction
28 which made the arrest or instituted the prosecution and if the
29 agency which is the custodian of the records has received a certified
30 copy of the complaint in the civil action, until the civil action has
31 been resolved. Any records sealed pursuant to this section by the
32 court in the civil actions, upon a showing of good cause, may be
33 opened and submitted into evidence. The records shall be
34 confidential and shall be available for inspection only by the court,
35 jury, parties, counsel for the parties and any other person authorized
36 by the court. Immediately following the final resolution of the civil
37 action, records subject to subdivision (a), (b), (c), (d), or (e) shall
38 be sealed and destroyed pursuant to subdivision (a), (b), (c), (d),
39 or (e).

(l) For arrests occurring on or after January 1, 1981, and for accusatory pleadings filed on or after January 1, 1981, petitions for relief under this section may be filed up to two years from the date of the arrest or filing of the accusatory pleading, whichever is later. Until January 1, 1983, petitioners can file for relief under this section for arrests which occurred or accusatory pleadings which were filed up to five years prior to the effective date of the statute. Any time restrictions on filing for relief under this section may be waived upon a showing of good cause by the petitioner and in the absence of prejudice.

(m) Any relief which is available to a petitioner under this section for an arrest shall also be available for an arrest which has been deemed to be or described as a detention under Section 849.5 or 851.6.

(n) This section shall not apply to any offense which is classified as an infraction.

(o) (1) This section shall be repealed on the effective date of a final judgment based on a claim under the California or United States Constitution holding that evidence that is relevant, reliable, and material may not be considered for purposes of a judicial determination of factual innocence under this section. For purposes of this subdivision, a judgment by the appellate division of a superior court is a final judgment if it is published and if it is not reviewed on appeal by a court of appeal. A judgment of a court of appeal is a final judgment if it is published and if it is not reviewed by the California Supreme Court.

(2) Any decision referred to in this subdivision shall be stayed pending appeal.

(3) If not otherwise appealed by a party to the action, any decision referred to in this subdivision which is a judgment by the appellate division of the superior court shall be appealed by the Attorney General.

(p) A judgment of the court under subdivision (b), (c), (d), or (e) is subject to the following appeal path:

(1) In a felony case, appeal is to the court of appeal.

(2) In a misdemeanor case, or in a case in which no accusatory pleading was filed, appeal is to the appellate division of the superior court.

SEC. 4. Section 851.86 is added to the Penal Code, to read:

1 851.86. Whenever a person is convicted of a charge, and the
2 conviction is set aside based upon a determination that the person
3 was factually innocent of the charge, the judge shall order that the
4 records in the case be sealed, including any record of arrest or
5 detention, upon written or oral motion of any party in the case or
6 the court, and with notice to all parties to the case. If such an order
7 is made, the court shall give the defendant a copy of that order and
8 inform the defendant that he or she may thereafter state he or she
9 was not arrested for that charge and that he or she was not
10 convicted of that charge, and that he or she was found innocent of
11 that charge by the court. The court shall also inform the defendant
12 of the availability of indemnity for persons erroneously convicted
13 pursuant to Chapter 5 (commencing with Section 4900) of Title 6
14 of Part 3, and the time limitations for presenting those claims.

15 SEC. 5. Section 4901 of the Penal Code is amended to read:

16 4901. A claim under Section 4900, accompanied by a statement
17 of the facts constituting the claim, verified in the manner provided
18 for the verification of complaints in civil actions, must be presented
19 by the claimant to the California Victim Compensation and
20 Government Claims Board within a period of two years after
21 judgment of acquittal or discharge given, or after pardon granted,
22 or after release from imprisonment, and no claim not so presented
23 shall be considered by the California Victim Compensation and
24 Government Claims Board.

25 SEC. 6. Section 4903 of the Penal Code is amended to read:

26 4903. On such hearing the claimant shall introduce evidence
27 in support of the claim, and the Attorney General may introduce
28 evidence in opposition thereto. The claimant must prove the facts
29 set forth in the statement constituting the claim, including the fact
30 that the crime with which he or she was charged was either not
31 committed at all, or, if committed, was not committed by him or
32 her, the fact that he or she did not, by any act or omission on his
33 or her part, intentionally contribute to the bringing about of his or
34 her arrest or conviction for the crime with which he or she was
35 charged, and the pecuniary injury sustained by him or her through
36 his or her erroneous conviction and imprisonment. For purposes
37 of this chapter, when determining whether the claimant
38 intentionally contributed to the bringing about of his or her arrest
39 or conviction, the factfinder shall not consider statements obtained
40 from an involuntary false confession or involuntary plea. *The*

1 *claimant shall bare the burden of proving by a preponderance of*
2 *the evidence that the statements were obtained from an involuntary*
3 *false confession or involuntary plea.*

4 SEC. 7. Section 4904 of the Penal Code is amended to read:

5 4904. If the evidence shows that the crime with which the
6 claimant was charged was either not committed at all, or, if
7 committed, was not committed by the claimant, and that the
8 claimant did not, by any act or omission, intentionally contribute
9 to the bringing about of his or her arrest or conviction for the crime
10 with which he or she was charged, and that the claimant has
11 sustained pecuniary injury through his or her erroneous conviction
12 and imprisonment, the California Victim Compensation and
13 Government Claims Board shall report the facts of the case and
14 its conclusions to the next Legislature, with a recommendation
15 that an appropriation be made by the Legislature for the purpose
16 of indemnifying the claimant for the pecuniary injury. The amount
17 of the appropriation recommended shall be a sum equivalent to
18 one hundred dollars (\$100) per day of incarceration served
19 subsequent to the claimant's conviction and that appropriation
20 shall not be treated as gross income to the recipient under the
21 Revenue and Taxation Code.